

Technical Support Document
For Federal Implementation Plan (FIP)
Emissions Caps for Sources Emitting Oxides of Nitrogen or
Volatile Organic Compounds - 40 CFR 52.2952 through 52.2956

February 1, 1995

SUMMARY OF PROPOSAL: EPA proposed that subject facilities which emit four tons per year of VOCs or NO_x in the year 2001 reduce their emissions by as much as 45 percent. In the year 1999, facilities would be required to submit compliance plans to EPA showing the methods they will use to achieve the required emission reductions between the years 2001 and 2005. EPA specified emission quantification methods which would be used to measure emissions when the program was implemented. Facilities which emit less than 4 tons per year but greater than or equal to 2 tons per year in 2001 would be required to submit annual compliance verification to ensure that they remain below the applicability level. Facilities with emissions less than 2 tons per year in 2001 would not be subject to the proposed regulation. EPA proposed to implement a reduction rate of up to 9 percent annually between 2001 and 2005. EPA also discussed a manufacturers bubble approach as an alternative to the industrial and commercial coatings, solvents, and inks cap for VOC emissions. The proposal is described in 59 FR 23323 (May 5, 1994).

CHANGES TO PROPOSAL: After evaluating public comments on the FIP and the updated inventory and modeling information provided in the November 1994 SIP, EPA has removed the Sacramento and Ventura stationary source cap programs from the final FIP notice. The VOC cap program for South Coast is being promulgated generally as proposed. A NO_x cap program for South Coast is being promulgated generally as proposed for Ventura and reserved for South Coast. Significant modifications reflected in the final rules are listed below.

For those rules which regulate VOC emissions:

- 1.EPA modified the definition of owner or operator to reflect that the Department of Defense was clearly subject to the rules (see section (a)(3) of the rules).**
- 2.EPA changed the recordkeeping requirements so that records need only be kept 3 years instead of 5 years.**
- 3.EPA clarified the baseline calculations (see section (a)(xiii)(A)).**
- 4.EPA clarified the applicability section of the rules (see section (b)(ii)(A) through (F)).**
- 5.EPA added an explicit new source review (NSR) interface at sections (b)(iii)(C), (c)(iii)(C), (d)(iii)(C), (e)(iii)(C), and (f)(iii)(C) of the rules.**

6.EPA added a Department of Defense emergency provision (see section (a)(5)(v)). This language is similar to language used in the South Coast RECLAIM program and was added for consistency and replacement purposes.

7.EPA established a specific rate of reduction for the rules.

For those rules which regulate NO_x emissions:

1.EPA modified the definition of owner or operator to reflect that the Department of Defense was clearly subject to the rules (see section (a)(3) of the rules).

2.EPA clarified the emission source definition (see section (a)(3) of the rules).

3.EPA changed the recordkeeping requirements so that records need only be kept 3 years instead of 5 years.

4.EPA clarified references to 40 CFR 52.2961 at section (a)(4)(i) of the rules.

5.EPA added an explicit new source review (NSR) interface at section (b)(iii)(C) of the rules.

6.With respect to baselines and reductions, EPA clarified that applicable units were subject to such requirements; see sections (b)(ii), (b)(iii)(a)(4), (b)(iii)(B), (b)(iv)(B)(1)(ii), (b)(iv)(B)(2), (b)(v)(A), and (b)(v)(B).

7.EPA added a Department of Defense emergency provision (see section (a)(5)(v)). This language is similar to language used in the South Coast RECLAIM program and was added for consistency and replacement purposes.

8.EPA established a specific rate of reduction for the rules.

RESPONSE TO COMMENTS:

1. COMMENT:

EPA's declining VOC emission cap will result in production curtailment and/or significant capital expenditure at facilities that have already invested in substantial pollution control. In addition, the administrative and enforcement burden on the agency could be substantial as the proposed FIP is inconsistent with existing local permitting programs. Several alternative programs were provided, and many commenters urged inclusion of trading in the cap program. Others provided alternative procedures for establishing baselines and emission reductions.

EPA disagrees that a monthly cap established using the provisions outlined in the cap regulations is detrimental to seasonal and cyclical operations. In addition, EPA believes, as stated in the proposal, that the monthly cap is the longest term which accommodates both operational flexibility and the preservation of the ozone NAAQS.

4. COMMENT:

Without trading and safe harbor provisions, declining caps would restrict operations of business and effectively serve as a strong deterrent to companies seeking to expand in or move to Ventura Co.

RESPONSE:

EPA has not promulgated stationary source cap programs in Ventura, but has finalized such programs for South Coast to ensure emission reductions needed to attain the ozone standard. EPA expects South Coast's more flexible RECLAIM program to replace the FIP cap.

5. COMMENT:

Pollution exceedences are seasonal and yearly averaging may not be adequate.

RESPONSE:

EPA agrees.

6. COMMENT:

It is appropriate for agencies to identify emission reduction goals and allow each stationary source to determine the most cost effective approach for meeting these targets rather than to have overly prescriptive control measures. Such an emissions reduction program should incorporate agreement on how emissions are quantified so the stationary sources can satisfy all parties that they are in compliance with their reduction pathway.

The VOC Cap program uses the SCAQMD 1990 emission inventory as the starting point for determining baseline emissions, yet this inventory does not agree with the emission factors determined in a study sponsored by the American Petroleum Institute and published in December 1993 in Publication No. 4589. The average emission factors used by SCAQMD are inflated because they assume a much higher leak rate for components than is supported

RESPONSE:

EPA supports the local development of such programs to replace the FIP cap program (see the discussion on replacement in the preamble). However, all such proposals must meet the requirements of the final economic incentive program (EIP) rule (59 FR 16690, April 4, 1994) and the attainment requirements of the Clean Air Act. EPA believes that many of the more flexible proposals offered in the comments will not provide adequate emission reductions, particularly in light of EPA's resource constraints. For example, EPA is concerned about designing VOC trading programs without recognition of toxics trading and protecting against the creation or exacerbation of toxics hot spots, and the agency is not confident that it has the resources to administer a large-scale trading program. However, EPA is willing to assist in local efforts to replace the FIP cap program and to ensure that such replacements meet the requirements of the final EIP rule.

2. COMMENT:

Eliminate the NOx emission cap in Ventura because it will result in a relatively small emission reduction while creating significant economic and operation constraints on regulated community. Substitute VCAQMP measures where emission reductions were not accounted for in the proposed FIP.

RESPONSE:

The promulgated FIP does not include a NOx cap measure for stationary sources in Ventura.

3. COMMENT:

The FIP rules inappropriately encourage facilities to delay air quality improvements until 2001 to be able to comply with the FIP declining emissions cap.

In addition, the monthly cap should be changed to an annual cap. Failing this, a buffer needs to be built-in reflecting how business operates and accounts for operational shifts based on weather, holidays, consumer demand, etc.

RESPONSE:

On the contrary, the FIP caps' method for setting baselines includes all of the reductions which are in place as of promulgation of the FIP. This ensures that such reductions are included as part of the overall attainment analysis and not delayed.

in other studies or by the results of Operators' inspections.

Affected industries have already implemented "essentially all aspects of the proposed FIP fugitives rule, with the exception of control of pressure relief devices under current Rule 1173." It will be difficult for them to achieve the reductions required by the FIP without being given credit for the reductions in emissions due to the existing local inspection and maintenance measure.

RESPONSE:

EPA agrees with the first point.

Regarding the fugitive emissions discussion, EPA intends to use the best available data to determine baselines if EPA ultimately implements the FIP cap program. However, the referenced study has not yet been finalized and is not in use in the FIP areas.

Finally, with respect to the implementation issues raised, see the detailed replacement discussion found in the preamble.

7. COMMENT:

The FIP cap has no provisions for market-driven trading which creates significant restrictions on the flexibility for regional businesses. EPA should alter the rule to reflect the work in progress at the regional air district. This will allow a VOC RECLAIM program to be substituted for EPA's measure at a future date.

RESPONSE:

See the response to item 1 above and the discussion of VOC RECLAIM found in the preamble.

8. COMMENT:

Measures included in the 1994 AQMP, especially the VOC RECLAIM program, should replace those in the FIP. Failing this substitution, EPA should establish procedures for substituting regional and state rules for FIP measures.

RESPONSE:

See discussions found in the preamble regarding replacement mechanics and issues.

9. COMMENT:

Both initial and endpoint allocations must be increased without discounts to include sufficient VOC's to reflect the replacement of ozone depleting compounds. Also, initial and endpoint allocations must be increased to reflect increases of VOC emissions as a result of trading out air toxics. Replacement allocations would be calculated based on the actual amount of VOC's needed. Process would be case-by-case.

FIP's proposal of 4-9 % per year is based on emission reduction requirements of FIP rather than on an assessment of the technologies available to the regulated sources. This may result in requiring reductions that are not technically feasible and would place a severe burden on sources, especially in the absence of a trading element. Annual reductions must be based on what would otherwise be required by the AQMP. The 1994 AQMP calls for a greater reduction in NOx emissions, which means that VOC emissions reductions need not necessarily be as extensive as required under the 1991 plan.

RESPONSE:

See the response to comment 1 above.

10. COMMENT:

A commenter made several statements about VOC emission caps for various sources, including POTWs, landfills, Commercial solvents/coatings, and refuse-to-energy plants. The commenter also suggested changes in the equation for the declining VOC emissions cap rule, and commented on the possible requirement of the installation of a continuous emissions monitoring system for VOC emissions from any source.

RESPONSE:

EPA hopes that the issues outlined by the commenter will be addressed by the local agency developing measures which will achieve the emission reductions necessary to replace the requirements placed on these sources in the FIP cap program. As these reductions are necessary for attainment, EPA has left the requirements as they were proposed, but encourages the local agencies to take such considerations as raised into account as they seek the reductions necessary for overall attainment. In addition, some commenters suggested that the facilities were already at BACT levels; however, whether these same facilities will be at BACT in the year 2001 and beyond is open to speculation.

11. COMMENT:

The use of broad-based air quality emissions trading programs will provide the best means to achieve the greatest amount of emission reductions for the least cost to the region. All sources should be included -- mobile and stationary, local and Federal.

RESPONSE:

EPA agrees with the commenter and believes that such programs are best designed and implemented at the local level. See the replacement section of the FIP preamble for a discussion of the replacement issue.

12. COMMENT:

Declining emission caps for stationary source categories in the FIP areas for which national standards have not yet been established is a simplistic approach which ignores the state's progress on stationary sources and is likely to produce unintended results. The FIP does not adequately account for the existing degree of control on stationary sources. The only reasonable way to implement emission caps is with source-by-source allocations that reflect the extent of past control.

The FIP also does not allow credit for voluntary reductions, nor does it recognize existing New Source Review rules or the banking provisions in district regulations. This compels every source to follow the same reduction schedule, even where variations would be substantially more cost-effective.

RESPONSE:

EPA has revised the rules to include a new source review mechanism. See the applicability and reduction rate sections of each rule. Again the concerns raised here are best addressed at the State and local level as discussed in the preamble.

13. COMMENT:

This measure "inaccurately categorizes publicly owned treatment works (POTWs) as organic waste disposal facilities and puts POTWs in the same category with treatment, storage and disposal facilities (TSDFs), landfills and other waste disposal facilities." POTWs should be treated differently than these other facilities when being regulated for VOC emissions. POTW emissions are a direct result of what the public and industries discharge into sewers, and the POTWs have little control over these emissions. Reformulation of

VOC-emitting products should be considered as an alternative regulation.

In addition, POTWs receive "extremely dilute VOC waste streams, and treat very high air volumes," as opposed to other sources in the waste disposal category that have low to medium air flow rates. Because of this difference, "the cost-effectiveness of removing VOCs is very different between POTWs and TSDFs." The requirement for a specific VOC reduction value is problematic because enhanced source control cannot achieve a 20-45% VOC reduction, because "most VOCs that are nontoxic originate from consumer products or small commercial facilities currently not regulated." The necessary alternative to enhanced source control under the FIP would require the POTWs to utilize add-on controls, which are much less cost effective than controlling industrial and commercial sources through the enhanced source control method. 40 CFR 52.2954 could be modified to eliminate the current reduction targets and to formulate new reduction levels on the basis of a local evaluation of cost-effectiveness. In addition, the VOC emission control options could be expanded to include all POTW sources on a contiguous site.

RESPONSE:

EPA hopes that the issues outlined by the commenter will be addressed by the local agency developing measures which will achieve the emission reductions necessary to replace the requirements placed on these sources in the FIP cap program. As these reductions are necessary for attainment, EPA has left the requirements as they were proposed, but encourages the local agencies to take such considerations as the commenter raised into account as they seek the reductions necessary for overall attainment. In addition, some commenters suggested that the facilities were already at BACT levels; however, whether these same facilities will be at BACT in the year 2001 and beyond is open to speculation. See the replacement discussion found in the preamble.

14. COMMENT:

If the South Coast adopts a VOC RECLAIM program but the EPA does not approve it as a SIP measure, sources should be allowed credit toward the FIP reduction requirements for reductions made under RECLAIM.

RESPONSE:

EPA can not allow credit in the FIP for measures which have not been approved into the SIP. However, EPA will continue to work with the South Coast in developing their VOC RECLAIM program so that it can be approved as a SIP measure.

15. COMMENT:

The proposed FIP is unclear regarding what credit, if any, stationary sources will get for voluntary or involuntary emission reductions made between 1990-2001. The FIP states that sources must subtract from their baseline emissions any "reductions that are projected to occur as a result of both SIP and FIP measures between 1990 and 2001. EPA should clarify which SIP measures will not count as credits towards the FIP, state that all other post-1990 SIP measures will either be a credit toward or will eliminate FIP reduction requirements, and state that voluntary emission reductions or emission reductions made in response to non-SIP local rules will either be a credit toward or will eliminate FIP reduction requirements.

In addition, EPA goes too far in requiring subtraction of "any measures." EPA should designate which SIP rules it included in its emissions calculation for purposes of determining amounts necessary for FIP reduction, and allow credit toward FIP reduction requirements for any reductions made from SIP rules between 1990 and 2001 that EPA did not include in the emissions calculation. Those SIP measures that were not included in the FIP calculations serve to reduce the emissions inventory, and sources should receive credit. Otherwise, the FIP would have the effect of requiring "extra" reductions, which the agency had not determined were necessary. Similarly, reductions that result from voluntary reductions or reductions made as a result of local rules should be eligible for credits, because these reductions also reduce the emissions inventory. Local regulations are already stringent and technology forcing, and if sources cannot take credit for meeting these rules, they may be placed in a situation in which reducing emissions further to meet the declining caps would be so costly that the source would either have to decrease production substantially or leave the area. In addition, refusing credits will discourage air districts and facilities from making early reductions and preparing rules to achieve that end. All parties might try to stall until 2001 to get FIP credit. On the other hand, early reductions would benefit the environment.

If facilities reduce emissions voluntarily between 1991-2001, they should get full credit for these reductions. The preamble suggests that EPA intended to give credit for voluntary reductions between 1990 and 2000, noting that the FIP's method of calculating the baseline "will not unfairly penalize facilities which have made reductions ahead of schedule" and that the baseline gives "flexibility beyond the 1990 proposal for facilities which have made early reductions of NOx and VOC emissions."

RESPONSE:

EPA has revised the baseline procedure found in the cap rules to state that only those measures which are adopted by the local agency as of the date of promulgation of the FIP will be included in the baseline calculation.

16. COMMENT:

The FIP has no provisions for removing all or part of the FIP requirements in response to voluntary or involuntary emission reductions. The result is that the FIP might place sources in "double jeopardy." EPA should clarify that voluntary emission reductions and non-FIP emission reduction requirements achieved between 1990 and 2001 will reduce or eliminate emission reductions required under the FIP. EPA should provide facilities with more certainty by committing to reviewing SIPs as soon as possible and informing districts and sources whether the SIPs will achieve attainment early in the SIP development process.

At present, facilities do not know what percentage reduction will be required beginning in the year 2001 under the facility declining emission caps, nor do they know whether EPA will approve the SIP for their district (and approval may not take place for several years.) In addition, the FIP states that facilities in the South Coast may be subject to additional reduction requirements in 2005. All of these factors create a level of uncertainty that may result in businesses leaving the area, shutting down, or both. EPA should consider ways to change the FIP to provide more certainty and to provide more certainty regarding the SIP approval process. Commenter was concerned that SIP approvals could be delayed until 1999, when compliance plans are due, and that there will be no certainty for sources regarding whether the FIP cap program will be imposed until the FIP reduction requirements are almost upon them.

RESPONSE:

EPA has revised the regulations to specify a 45% (or 9% annual rate of reduction) reduction for the cap program. As replacement measures are approved and new data is reviewed, this reduction may change. In addition, EPA has clarified the applicability requirements in the regulations. EPA understands the concern about the uncertainty of the FIP Cap program's implementation and reiterates that it supports expeditious local development of programs to replace the FIP Cap program.

17. COMMENT:

EPA should change the method of calculating baseline emissions to make it simpler and more flexible. The proposed formula for the monthly emissions cap baseline will create considerable confusion and a huge administrative burden for facilities as well as for EPA. Most facilities are unlikely to have daily emission records for 1989 and 1990 and would have to laboriously reconstruct emissions from all sources. Another problem is that the term

"sources" is defined so broadly that it includes emissions that many companies may not have previously included in their emissions calculations. (Example: painting a facility.) Even if facilities have records, they will spend a lot of time determining which emission factors to use and would have to locate documentation regarding the days of facility operation to arrive at "operating or usage time" during the baseline period. Additional time would be spent discussing and negotiating the calculations with EPA. Because EPA might not review these emission calculations until after the companies submit compliance plans in 1999, facilities will not have much certainty regarding their baseline until the FIP requirements are due.

Also, the FIP's proposed method for computing the month emissions cap does not allow for any flexibility or month-to-month variation in emissions levels at facilities. Emissions levels vary from one month to another based on factors such as production variation and changes in pollution control equipment efficiencies, such as carbon life. Manufacturers need flexibility to allow these variations.

RESPONSE:

EPA has revised the calculation methodology to clarify which reductions are creditable toward compliance with the cap. EPA sought to include the minimum amount of information to develop adequate baselines in the cap program; however, EPA believes that further simplification would jeopardize the areas' ability to attain.

18. COMMENT:

The preamble description of numbers of affected facilities greatly underestimates the actual effect. Instead of a bright-line 4 ton/yr cutoff, the cap applies to facilities that have greater than or equal to 15 lbs of VOC emissions in any one day. This could bring in very small emitters who would face substantial hardship in meeting rules. This problem is exacerbated by the fact that once a facility exceeds the cap emission threshold, it can never exit the emission reduction program. EPA should include a more realistic exemption level of a flat 4 tons of emissions per year, rather than a certain number of pounds per day. The FIP could include provisions requiring sources to certify on an annual basis that they are below the threshold, and requiring them to notify EPA within 30 days if that number is exceeded. If sources exceed the threshold, they should be subject to the cap. If EPA insists on a daily threshold, it must estimate the costs and administrative burden of the cap program based on the much larger universe of sources likely to be affected by the FIP caps. At present, many facilities may believe they would not be subject to the cap rules because the FIP preamble does not reference the lb/day threshold.

EPA should exempt facilities that have already achieved the necessary total FIP cap reductions from the FIP cap program requirements. Such a facility could submit a certification to EPA by 1/1/01 that the facility has achieved the needed reductions. This provision would eliminate administrative burden for EPA too. Also, EPA should reduce the recordkeeping requirements for facilities below 4 tons. FIP should be revised to only require facilities to maintain records demonstrating that its twelve months of emissions are below the 4 tons/yr threshold, and clarify that facilities need not collect and record emissions for each calendar day. If daily records are required, FIP preamble should make clear that records need not be physically prepared each calendar day, but facilities can go back and prepare information for past days based on reliable production records.

RESPONSE:

EPA has corrected the applicability provisions of the regulation. Those sources greater than or equal to 4 tons in 2001 are subject to the FIP cap program in its entirety. Those sources greater than or equal to 2 tons in 2001, but less than 4 tons are subject only to annual exemption verification requirements. Those sources less than 2 tons in 2001 are not subject to the program.

19. COMMENT:

The FIP is unclear regarding whether the manufacturer cap or the user cap applies to pharmaceutical facilities. The manufacturer cap states that facilities under the cap include manufacturers of drugs, including pharmaceutical preparations. But the definitions section under the cap states that facilities covered by the "user cap" are not included in the "manufacturer cap." The manufacturer's cap would, therefore, not include pharmaceutical facilities, because those facilities would fit within the user cap's broad definition of industrial or commercial solvent user. The user cap definition is so broad that it appears to cover any manufacturing operation that uses solvents. Another portion of the user cap definition does suggest that EPA did not intend such a broad reading of the definition, because it lists the facilities that might be included, and focuses primarily on various types of coating regulations. It does not list pharmaceutical facilities. Commenter requests that EPA clarify that pharmaceutical facilities fall under the manufacturer's cap. EPA should limit the definition of "industrial or commercial solvent use facility."

The FIP's cap program could create particularly severe hardship at pharmaceutical facilities, or any medical device or dental or orthodontic product manufacturing facility. Options such as product reformulation, product substitution, control equipment, and production curtailments may be severely limited at these types of facilities due to FDA regulations. For example, FDA

requires prior approval for substitution of ingredients, reformulations, and, in some cases, for reconfiguration of equipment. FDA could determine that low-VOC products are less sterile or have more potential for contamination. The FDA approval process takes years, and some products could require approval from foreign agencies as well. As a practical matter, the reductions sought by the FIP may be virtually impossible to attain within the 2001-2005 time period without a production curtailment.

EPA should allow those facilities requiring FDA approval in the South Coast FIP area to apply for extensions until no later than 2010 for compliance with the FIP cap requirements. Affected facilities in the other FIP areas could apply for extensions until no later than 2005. Facilities would be required to certify either that 1) prior FDA approval is required to make the VOC reductions necessary to meet the declining cap and that they had applied for that FDA approval, or 2) the FDA would not approve a particular VOC-reducing change and the facility needs more time to find an alternative. These changes would not interfere with attainment deadlines, but would give facilities the flexibility necessary to meet the stringent reduction requirements in the FIP.

RESPONSE:

EPA revised the FIP to withdraw the manufacturer's bubble proposal. Therefore the sources of emissions identified by the commenter are subject to the FIP cap program.

EPA understands the comment regarding pharmaceutical facilities and FDA approval. This issue is best addressed by a local measure which is sensitive to such concerns and achieves equivalent emission reductions to replace the cap program for those facilities. See the discussion on replacement found in the preamble.

20. COMMENT:

The FIP does not provide for the participation of new sources in the program, which would result in similar facilities being subject to completely different regulatory programs depending on when they were constructed. It is also unclear how modified sources would be treated under the EPA proposal. Preventing new sources from participating also diminishes the benefits of the trading element, which is enhanced by broadening the scope of participating sources. Commenter suggests that new and modified sources enter the program on the following terms: net emissions increases would be determined based on a comparison of potential to emit before and after the proposed modification; best available control technology would be required; and offsets would be required on a one-to-one ratio.

RESPONSE:

EPA has revised the regulation to include a mechanism for addressing new sources.

21. COMMENT:

Determining overall control efficiency of a carbon adsorber using a mass balance technique is totally inappropriate. Carbon adsorbers should be tested at initial installation, breakthrough monitors should be installed on carbon beds, total hydrocarbon analyzers should be installed upstream and downstream to confirm efficiency, and maintenance procedures should be implemented to ensure that the unit and monitors are operating properly. The concept of a rolling period is totally unnecessary, and only creates additional recordkeeping and reporting burdens. The entire concept of using mass balance calculations to determine the overall control efficiency of a carbon adsorber, or any other similar control technology, should be eliminated.

The enforcement program should be patterned after the NO_x/SO_x RECLAIM program. Facilities would be provided a reconciliation period, at the end of each compliance period, during which emission credits could be purchased to offset any exceedance of the facility's emission cap. Emissions beyond the cap that are not offset would constitute a single violation for each day of the compliance period, unless the facility can demonstrate the actual number of days the facility operated after the cap was exceeded. If the facility can make such a demonstration, only operation on those days after the cap was exceeded, plus one violation for each 1,000 pounds of emissions, or portion thereof, emitted in excess of the facility cap, would constitute violations. In the event the price of emission credits ever exceeded \$10,000 per ton, the enforcement mechanism described above would be reevaluated, and any appropriate changes would be made. If a facility exceeds its cap and does not offset the emissions, the cap would be reduced by the amount of the exceedance in the next compliance period. Excess emissions resulting from a breakdown, would not count towards the cap, provided the facility notified the SCAQMD of the breakdown and took appropriate steps to correct the breakdown.

RESPONSE:

With respect to the comment regarding carbon adsorbers, EPA disagrees and has carefully developed the methodology used to ensure that it provides the most accurate measurement of emissions.

With respect to the comment regarding penalties, the commenter has misstated the RECLAIM penalty provisions. Regardless of the commenter's misstatement, EPA has not changed the penalty provisions found in the FIP cap

program, which are consistent with the position EPA has taken in the final EIP rules (see 59 FR 16690, April 4, 1994) and which EPA believes provide an appropriate deterrent to non-compliance for these types of programs. This is not to say, however, that alternative penalty provisions could not be developed and approved by EPA which do not fit the provisions found in the FIP cap program.

22. COMMENT:

VOC products such as architectural coatings, aerosol products, and other material categories that are generally available to consumers, should be regulated at the supplier or distributor. This could be done through a manufacturer's bubble, or through traditional VOC content limits. Other types of coatings, such as specialty coatings used in aerospace applications should be included in a cap program. Specialty coatings should not be included in a manufacturer's bubble because it could jeopardize their availability.

RESPONSE:

Despite EPA's ongoing belief in the validity of a manufacturer's bubble-type program for VOC-containing materials, EPA has not finalized such a program in the FIP after consideration of the public comments and the evaluation of EPA's existing resource constraints.

23. COMMENT:

EPA should revise the VOC cap program to be more flexible and more like RECLAIM. EPA should change monthly compliance to an annual basis, allow facilities to pick their peak baseline year from a broader base period (1989-1993), and allow trading among sources. A broader base period is needed to prevent firms from being unfairly penalized due to the California recession's low level of economic activity. Because EPA recently decided that the NOx/SOx RECLAIM program is acceptable, EPA should use the same principles for VOC.

RESPONSE:

EPA addressed many of these issues in earlier comments. However, it should be noted that EPA has not found the NOx/SOx RECLAIM program approvable. For further information, see the preamble regarding the proposed conditional approval action on NOx/SOx RECLAIM.

24. COMMENT:

The preamble is ambiguous on the relationship of the proposed cap program to the bubble. It is not clear whether the manufacturer's bubble is instead of the cap or in addition to the cap. The preamble references CARB's efforts to design a similar program for consumer products. However, industrial and commercial solvents and coatings are totally different from consumer products. Purchase and use of consumer products occurs at a huge number of point sources. In contrast, industrial and commercial solvents and coatings are used at limited numbers of facilities, most of which are permitted and known to the air districts.

Unlike the FIP cap program, which is localized to the three FIP basins, the manufacturer bubble concept is presented as a statewide restriction. While manufacturers may sell throughout the state, it is the use of VOC-containing products in the specific FIP areas that is of concern. In fact, manufacturers sell throughout the U.S., and product can be shipped more easily from Nevada to LA than from San Francisco. Thus, statewide restriction of manufacturers is no more effective than local control, and neither is appropriate for these types of products. Also, the increasing sales of low VOC coatings in non-FIP areas, does not reduce VOC emissions in the these areas. The types of coatings that large customers want may make it impossible to balance coatings among other customers. This imposes grave restrictions on the workings of the market economy.

In addition, when certain large customers purchase materials, can they be used for either industrial or architectural service? Coatings like architectural coatings, if used in a "facility" may come under the facility cap or permit, but if used architecturally, would not be consider architectural coatings. A manufacturer would not be able to determine if the material is to be included or not included in the average.

RESPONSE:

EPA is not finalizing a manufacturer's bubble as part of the FIP. However, partly to increase public awareness about VOC emissions from coatings and solvents, EPA may consider proposing a national labeling initiative requiring containers of coatings and solvents to list their VOC content and a description of how VOCs help create tropospheric ozone, a component of smog. Labeling containers with their VOC content will provide information necessary for purchasers to make an informed choice on choosing the product that would best meet their needs at minimum financial and environmental cost. However, EPA is not proposing regulatory language or requesting comments on this labeling initiative at this time.

25. COMMENT:

No fee/penalty is discussed for violations of a manufacturer's average. Such penalties could be excessively high and could invoke the criminal provisions of the CAA. However, there is no practical way a manufacturer could be certain of achieving a specific average based on sales without causing major disruptions in the marketplace. To make the adjustments which may be necessary based on a periodic assessment of the situation could result in a manufacturer being unable to fulfill its contracts, and thus be open to lawsuits from customers and producing very bad customer relations.

A manufacturer's bubble would negate the positive effects of the cap program. In addition, companies that have already invested in equipment to allow the use of higher VOC coatings would lose this benefit because manufacturers would be more hesitant to sell higher VOC coatings and may charge more to reduce demand. There is also the possibility that some coatings may simply become unavailable. Also, contrary to the preamble, this regulation does not reduce pollution at the source. Neither the manufacture of these products or the sale of these products is the source of pollution. The source is the use of these products, and there are add-on control devices to mitigate such pollution from use. The bubble also increases the technological complications of meeting a technologically forcing rule by removing viable options from the emission reduction.

RESPONSE:

EPA is not finalizing a manufacturer's bubble rule as a result of these and other comments.

26. COMMENT:

The FIP inappropriately addresses sources without permitted emissions in the years of 1989-90. To use these years as the basis for the declining cap is neither reasonable or feasible. Instead, the first year of FIP implementation might make more sense.

RESPONSE:

EPA has revised the cap regulation so that facilities in such circumstances would not be subject to the cap program.

27. COMMENT:

Banked emission reduction credits should be critically reevaluated, because some would not meet the reasonable test for creditable ability, and therefore,

would not be real reductions.

RESPONSE:

EPA agrees.